PANCA RESMI SDN. BHD.

v.

YOKE HOH SDN. BHD.

HIGH COURT MALAYA, KUALA LUMPUR
TUAN LOW HOP BING JC
[CIVIL SUIT NO. S1-22-261-94]
11 AUGUST 1994

INJUNCTION: Mandatory injunction - Principles applicable - Exceptional circumstances - Application to restrain defendant, workers, squatters, licensees and tenants from occupying and possession of land until trial - Effect of relief - Prohibitory in language - Whether relief sought gives full relief of claim sought in final hearing - Balance of convenience.

This was an application by the plaintiff for an order that the defendant including but not restricted to its workers, squatters, licensees and tenants having possession of land occupying the whole or part of the land of 871 acres in area be prohibited and restrained from entering, taking possession of and occupying the whole or part of the said agricultural land.

Held:

[1] The injunction sought by the plaintiff is in form and in substance a mandatory injunction. The affidavit of the plaintiff did not disclose an exceptional or rare case for an interlocutory mandatory injunction to be granted in favour of the plaintiff.

[2] In the instant case, the state of affairs which had previously existed before the filing of the summons in chambers should be maintained and preserved, so that no mandatory injunction should be granted in favour of the plaintiff. The balance of convenience is in favour of the defendant.

[3] As the plaintiff's claim is actually for a sum of RM190,031.25 which is a monetary claim, there can therefore be no irreparable damage to the plaintiff. The plaintiff's claim is clearly and precisely quantifiable in mathematical monetary terms.

[Summons in chambers dismissed with costs].

Cases referred to:

Wah Loong (Jelapang) Tin Mine Sdn. Bhd. v. Chia Ngen Yiok [1975] 2 MLJ 109 ***(foll)***
Sivaperuman v. Heah Seok Yeong Realty Sdn. Bhd. [1979] 1 MLJ 150 ***(foll)***
Shepherd Homes Ltd. v. Sandham [1970] 3 WLR 348 ***(refd)***
Hounslow Local Borough Council v. Twickenham Garden Development [1970] 3 WLR 538 ***(refd)***
Kumpulan Guthrie Sdn. Bhd. v. Nair [1980] 2 MLJ 295 ***(refd)***
American Cyanamid [1975] AC 396 ***(refd)***
Cheng Hang Guan & Ors. v. Perumahan Farlim (Penang) Sdn. Bhd. & Ors. [1988] 2 CLJ 35/ [1988] 3 MLJ 90 ***(foll)***

For the plaintiff - Tan Hock Chuan; M/s. Kam Woon Wah & Co.
For the defendant - L.H. Saw; M/s. Saw & Co.

JUDGMENT

Low Hop Bing JC:

This is an application by way of summons in chambers (enclosure 3) by the plaintiff for an order that the defendant including but not restricted to its workers, squatters, licensees and tenants having possession of and occupying the whole or part of the land of 871 acres in area in the Mukim of Serendah, Selangor Darul Ehsan, wherein the particulars are as follows:

(i)	Geran No. 34710 Lot No. 4459	dikenali dahulu sebagai CT No. 10723 Lot Nos. 1955 & 1957
(ii)	Geran No. 34708 Lot No. 1957	
(iii)	Geran No. 34711 Lot No. 1951	dikenali dahulu CT No. 10725 Lot Nos. 1951 & 1965
(iv)	Geran No. 34716 Lot No. 4457	dikenali dahulu CT No. 10726 Lot Nos. 1952 & 1954
(v)	Geran No. 34714 Lot No. 1954	
(vi)	Geran No. 34718 Lot No. 4461	dikenali dahulu sebagai CT No. 19741 Lot Nos. 1958 & 1960
(vii)	Geran No. 34721 Lot No. 4462	dikenali dahulu sebagai CT No. 10742 Lot Nos. 1961 & 1963
(viii)	Geran No. 34722 Lot No. 4463	
(ix)	Geran No. 34723 Lot No. 4464	
(x)	Geran No. 34724 Lot No. 4465	
(xi)	Geran No. 27676 Lot No. 1233	

(hereinafter called "the said agricultural land") be prohibited and restrained from entering, taking possession of and occupying the whole or part of the said agricultural land.

In its supporting affidavit, the plaintiff affirmed that on 10 December 1992, the plaintiff and the defendant executed a written agreement ("the said agreement") whereby the plaintiff agreed to appoint the defendant as a contractor for the cultivation, maintenance and upkeep of the said agricultural land and to harvest all the agricultural produce including oil palm from the said agricultural land in accordance with methods acceptable to the plaintiff. The contract period commences from 1 December 1992 and shall continue in force until such time as the estate has been fully and completely developed unless earlier terminated.

Clause 5 of the said agreement provides that for the services rendered by the defendant, the defendant shall be absolutely entitled to all the gross sale proceeds from all the agricultural produce harvested on the said agricultural land, provided that the defendant shall be responsible and undertake to pay to the plaintiff:

(a) the sum of RM225 per acre for each year commencing 1 January 1993 and the amount allegedly due hereunder was RM195,975 from 1 January 1993 to 31 December 1993 (RM225 x 871 acres); and

(b) upon execution of the said agreement, a lump sum payment of RM49,050 being three months' deposit for the due observance and performance by the defendant of the stipulations, terms and conditions of the said agreement.

Clause 5.2 of the said agreement provides that in the event the defendant fails to comply with any of the provisions in the said agreement, the defendant shall not be entitled to

any monies from the sale of any produce from the said agricultural land and the defendant shall account and remit to the plaintiff all proceeds from the sale of the produce from the said agricultural land.

The plaintiff contends that the defendant has failed, refused and/or neglected to carry out its obligations and undertakings to make payment for the sum of RM245,025 but has instead paid a sum of RM48,993.75 to the plaintiff, leaving a balance sum of RM196,031.25 which is the subject matter of the claim in the plaintiff's writ of summons.

Pursuant to the said agreement and also after paying the said sum of RM48,993.75 to the plaintiff, the defendant commenced their agricultural activities on the said agricultural land. However, the plaintiff through its solicitors subsequently purportedly terminated the appointment of the defendant as the contractor.

The defendant states in the affidavit in reply that the plaintiff's claim for the sum of RM196,031.25 is wrong and has not taken into consideration the amount which the plaintiff owes to the defendant, in the sum of RM482,389.19 which the defendant claims by way of set off, being the costs of constructing residential houses, offices and other buildings together with infrastructure, road, water pipes and electricity supplies (hereinafter jointly referred to as "the said construction project") which were built and/or installed by the defendant for the plaintiff in the plaintiff's estate, which included the said agricultural land.

The defendant further avers that before the said agreement was entered into between the plaintiff and the defendant, one Tony Tiah Thee Kian, ("Tony Tiah") the agent and owner of the plaintiff met one Looh Keo @ Looh Lim Teng ("Looh"), a director of the defendant, requesting the latter for assistance in resolving the problem relating to the settlement of the estate workers while waiting for the development and construction of low cost houses for them. Tony Tiah requested Looh to proceed with the said construction project on the plaintiff's land to settle and accommodate all the estate workers. Tony Tiah agreed to pay all the costs incurred in the said construction project so long as the total costs did not exceed RM1,000,000.

The defendant further alleges that Tony Tiah also agreed to give the contract to the defendant to harvest the agricultural produce of the plaintiff, as a consideration for the defendant's undertaking to carry out the said construction project. It has also been the understanding between them that any payment which the defendant has to make under the contract to harvest the agricultural produce shall be set off against the costs of the said construction project. The contract to harvest serves the purpose of providing jobs to the workers who were required to stay in the estate.

In the above circumstances, the defendant denies owing the plaintiff any money. On the contrary, the defendant contends that it was the plaintiff who owes money to the defendant, by virtue of the fact that the plaintiff has not paid even a single sen to the defendant for the said construction project.

The defendant states that it has refused to leave the estate until payments for the said construction project have been fully settled and the issue of accommodating the workers resolved. According to the defendant, there exists a collateral contract between the plaintiff and the defendant whereby in consideration of the defendant undertaking to complete the said construction project for the plaintiff, the plaintiff will give the defendant the contract to harvest and for this purpose to employ all the estate workers.

The defendant further alleges that as a result of the collateral contract and set-off, the defendant has built the said construction project on the plaintiff's estate in the interest and for the profit of the plaintiff. The defendant contends that if the defendant were to be evicted from the plaintiff's estate, the said construction project which has been completed will be taken over by the plaintiff who would in turn use the same as residence for the plaintiff's own workers. The existing estate workers of the defendant would then be deprived of their basic housing accommodation in the said construction project.

The defendant finally contends that the claim of the plaintiff is merely monetary and therefore the plaintiff cannot be said to suffer any irreparable damage.

Learned Counsel for the plaintiff submits that there is a real possibility of the plaintiff suffering irreparable damage if the injunction were not granted to the plaintiff (see also paragraphs 13 and 16 of the plaintiff's affidavit dated 6 July 1994 (enclosure 2)).

Plaintiff's learned Counsel further asks the Court to maintain and preserve the *status quo* (see also paragraph 20 of the said affidavit). He further submits that the injunction sought herein is not a mandatory injunction but a prohibitory injunction.

Defendant's learned Counsel submits that the interlocutory injunction which the plaintiff is asking is in form and in substance a mandatory injunction and ought not to be granted before trial except in exceptional and extremely rare cases. In support of his submission, he relied on the decision of Abdoolcader, J. (as he then was) in *Wah Loong (Jelapang) Tin Mine Sdn. Bhd. v. Chia Ngen Yiok* [1975] 2 MLJ 109 ("the *Wah Loong* case").

Upon a very careful and meticulous analysis of the authorities in relation to injunctions in general, prohibitory injunction and mandatory injunction in particular, it is my considered opinion that the injunction sought by the plaintiff is in form and in substance a mandatory injunction.

The Federal Court in *Sivaperuman v. Heah Seok Yeong Realty Sdn. Bhd.* [1979] 1 MLJ 150 has affirmed the decision of the High Court in the *Wah Loong* case. In addition, the Federal Court held that an interlocutory injunction couched in prohibitory terms restraining the appellant until the trial of the suit from remaining in the quarters is in effect a mandatory injunction. "Equity looks to the substance and intent and not to the form, and the interlocutory injunction sought and granted although prohibitory in language is mandatory in substance and effect" (*Shepherd Homes Ltd. v. Sandham* [1970] 3 WLR 348, 359; *Hounslow Local Borough Council v. Twickenham Garden Development* [1970] 3 WLR 538, 570-1).

The Federal Court decision in *Sivaperuman supra* was followed by Wan Yahya, J. (as he then was) in *Kumpulan Guthrie Sdn. Bhd. v. Nair* [1980] 2 MLJ 295 in which the learned Judge held, *inter alia*, that although the application therein was made out to be and has the semblance of a restrictive interlocutory injunction, it is in effect nothing less than a mandatory injunction. An order that a person should refrain from coming into the house which he is occupying is nothing different from ordering him to vacate it.

> An interim or interlocutory mandatory injunction is never granted before trial save in exceptional and extremely rare cases.

(per Abdoolcader, J. in the *Wah Loong* case).

In the instant case before me, the plaintiff seeks an interlocutory injunction to prohibit and restrain the defendant, its workers, squatters, licensees and tenants from entering, taking possession of and occupying the whole or part of the said agricultural land. As a matter of fact, before the filing of the writ of summons and the summons in chambers herein, the defendant and the estate workers (residing in the long houses in the said construction project built by the defendant) had been carrying on their agricultural activities of cultivating, maintaining and upkeeping the said agricultural land as well as harvesting the crops pursuant to the said agreement for which the defendant has paid the plaintiff the said sum RM48,993.75. The interlocutory injunction sought by the plaintiff has the effect of dislodging the defendant and all the estate workers who had hitherto been there at all material times. The cultivation, maintenance and upkeep of the said agricultural land and the process of harvesting are all continuing and on-going processes which are inevitably preceded by an investment of enormous capital outlay in and on the land, the purchase of agricultural machinery and equipment as well as employment of various categories of workers such as plantation managers, assistants and workers. To grant a mandatory injunction is to put a complete stop to all these agricultural activities which had been carried on by the defendant upon the execution of the said agreement on 10 December 1992.

Upon a careful study of affidavit of the plaintiff, I am unable to find an exceptional or rare case for an interlocutory mandatory injunction to be granted in favour of the plaintiff.

The plaintiff has in paragraph 20 of its affidavit (enclosure 2) asked the Court to maintain and preserve the *status quo*. The maintenance and preservation of the *status quo* means that the interlocutory mandatory injunction sought by the plaintiff should be refused so that the already existing state of affairs i.e. the cultivation, maintenance and upkeep of the said agricultural land and the harvesting of the crops which the defendant has been carrying on for the past 20 months and the occupation of the long houses by the estate workers for the same period, should be allowed to continue. To interrupt the defendant and all his estate workers in the course of an established enterprise would cause much greater inconvenience to the defendant and all his workers since the defendant and all his estate workers would have to start again to establish it in the event of the defendant succeeding at the trial: *American Cyanamid* [1975] AC 396 at page 408 G-H (see the observation of Edgar Joseph, Jr., J. (as he then was) in *Cheng Hang Guan & Ors. v. Perumahan Farlim (Penang) Sdn. Bhd. & Ors.* [1988] 3 MLJ 90, 99.

The meaning of the Latin phrase "*status quo*" has been judicially defined. Edgar Joseph Jr., J. in the above case of *Cheng Hang Guan*, has adopted the following approach:

> And when considering the definition of the term '*status quo*', Sir John Pennycuick said in *Fellowes v. Fisher* at pp. 199H-200A:
>
> > By the expression '*status quo*' I understand to be meant the position prevailing when the defendant embarked upon the activity sought to be restrained.
>
> Similarly, in *Garden Cottage Foods Ltd. v. Milk Marketing Board*, Lord Diplock said this (at p. 140D):
>
> > the state of affairs before the last change would be the relevant *status quo*.'
>
> In the context of the present case, I have no doubt that the *status quo* means the position prevailing immediately before the making of the plaintiffs' application for *ex parte*

interim relief when the third and fourth defendants embarked upon the activities sought to be restrained.

In the instant case, I am of the considered opinion that the *status quo* i.e. the state of affairs which had previously existed before the filing of the summons in chambers should be maintained and preserved, so that no mandatory injunction should be granted in favour of the plaintiff. The balance of convenience is in favour of the defendant.

The plaintiff's claim is actually for a sum of RM190,031.25 which is a monetary claim and the basis for such a claim is RM225 per acre per year pursuant to the said agreement. There can therefore be no irreparable damage to the plaintiff whose claim pursuant to the said agreement is clearly and precisely quantifiable in mathematical monetary terms.

In the circumstances, I dismiss the plaintiff's summons in chambers (enclosure 3) with costs.